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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ROGER VIPPOLIS and DEBORAH VIPPOLIS,

Petitioners,

vs.

THE VILLAGE OF HAVERSTRAW,
THE HAVERSTRAW VILLAGE POLICE DEPT.
and MICHAEL A. SQUILLINI,

Respondents.

BRIEF IN OPPOSITION TO CERTIORARI

New York, New York
24 February 1986

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Respondents, VILLAGE OF HAVERSTRAW, HAVERSTRAW VILLAGE POLICE DEPARTMENT, and MICHAEL A. SQUILLINI, defendants below, on this brief oppose the application for certiorari by plaintiffs below, ROGER and DEBORAH VIPPOLIS.

Order and Opinions Below

The order of the United States Court of Appeals for the Second Circuit sought to be reviewed here is reported officially at 768 F. 2d 40 (2d Cir. 1985). There are no relevant opinions in the district court.

Counterstatement of the Case

A. The Incident.

Both sides agree that respondent Squillini, then on duty as a part-time police officer for the respondent Village of Haverstraw, began following petitioner Roger Vippolis's car from the corner of 9W and Gurney Avenue in Haverstraw (TR at 29; TR at 478).[1] According to Squillini, Vippolis "floored" his vehicle as he

1. "TR" refers to the pages of the trial transcript.

approached the yellow light (TR 478). According to Vippolis, he had stopped there at a red light (TR 29), and then proceeded a short distance to his home driveway, never exceeding 30 mph (TR 30), where he got out (TR 31) with a gallon of milk in his left hand and a leather jacket and keys in the right hand (TR 38). Squillini appeared slowly in the police car and stopped (TR 38), rolled down his window and said "you'd better slow that car down, buddy" (TR 39). Vippolis responded "what the **** are you talking about?" (Ibid.) Squillini thereupon got out of his car, pulled out a blackjack and started hitting Vippolis on the head (TR 40), inflicting at least six blows to Vippolis's head with a blackjack (TR 41). This took 30 seconds to a minute (TR 42). Vippolis protected himself (ibid.) and never struck Squillini (ibid.). The incident ended when Vippolis's wife and

daughter came out of his house. Vippolis went inside and Squillini went to his car (TR 42-43).

According to Squillini (who prevailed on all issues before the jury), he followed Vippolis from 9W and Gurney Avenue, intending to pull him over and give the driver a warning (480). He followed the Vippolis car to Vippolis's driveway, not knowing that it was Vippolis whom he was following[2] (TR 480-481). While still in his car Squillini told Vippolis "I would advise you to slow the vehicle down before someone gets hurt" (TR 486). Vippolis responded "What the **** do you want here? Get out of here" (TR 487). Squillini then asked for license and registration (ibid.), and

2. There was extensive testimony about a prior incident where allegedly Squillini came upon Vippolis beating one Pablo DeJesus, but the jury verdict in Squillini's favor renders this testimony moot.

Vippolis responded with "Get the **** off my property" (TR 487). Squillini said "you are under arrest", reached for his handcuffs, and "he [Vippolis] had me by the throat" (TR 487). A scuffle ensued and Squillini used his blackjack "three times" to get Vippolis off him (TR 487). Vippolis then backed off, went into the house (TR 488). Squillini radioed for assistance (TR 489) and officer Scorese came.

Both sides agree that Scorese then knocked on Vippolis's door and put Vippolis under arrest (TR at 45, 52-53; TR at 490; TR at 422). According to Vippolis (TR 47), he was taken without any handcuffs to the police station (TR 48), where he made a phone call (TR 52a). Vippolis was put in a cell (TR 53), taken later to Nyack Hospital Emergency Room (TR 53), driven back to the police station approximately at 10 p.m. (TR 54) where he

met his family (TR 55) and was arraigned and released at about midday (TR 56).

Vippolis was charged with assault (New York Penal Law §120.05), obstructing governmental administration (P.L. §145.05) and disorderly conducted. P.L. §240.20. He was acquitted on all charges.

B. Plaintiffs' Trial Proof Against Respondent Village.

As the Second Circuit noted (3a-4a), plaintiffs at trial presented two theories of municipal liability, only one of which the jury resolved in their favor: "Vippolis sought to establish a departmental practice of taking no action against officers charged with violating citizens' civil rights" (3a-4a). The jury heard extensive evidence about prior alleged incidents of police misbehaviour and the police department's response to them (TR at 195-321). This line of proof

failed, however, because the jury resolved the allegation of municipal inaction in favor of the defendants (see Interr. 4(a) at 13a).[3] *The record on these issues must* therefore be read in the light most favorable to respondents and not as petitioners read it. In petitioners' second theory of liability, on which they did prevail, "Vippolis sought to establish that the municipal defendants had a policy of inadequate training of police officers" (4a). His proof, however, showed only that Squillini had been hired without taking a police training course mandated by State law (4a). It is this line of proof which the Second Circuit held inadequate on two different grounds:

First: "Vippolis failed to prove that Squillini's training was inadequate.

3. The jury verdict sheet is attached here so as an appendix numbered (consecutively from the petition) 13a, 14a.

Vippolis made no effort to establish what training Squillini received and what further training he would have received *had* the municipal defendants complied with State law" (8a-9a);

Second: "Similarly, by offering no evidence on which the jury could compare the instruction provided in the training program with that given Squillini, Vippolis failed to prove that the alleged policy of inadequate training caused the alleged denial of his constitutional rights" (9a).

Neither ground warrants review here, limited as each is to this particular trial record.

Argument

Summary

Plaintiffs-Petitioners present as

"facts" every allegation they had hoped to persuade the jury, but neglect to advise the Court that under the verdict sheet (attached as 13a-14a) they lost 4 out of 5 liability issues decided, in particular, the jury rejected one of their two theories of municipal liability. Further, plaintiffs-petitioners took no appeal from the liability verdict or the judgment in favor of Squillini; thus, the bulk of their petition consists of questions and contentions they chose not to present to the Second Circuit.[4] Their petition essentially is a complaint that the court below misread this particular record, an issue not worthy of certiorari. See Rule 17.1.

4. Since Squillini was not a party to the appeal or cross appeal in the Second Circuit, he cannot be made a respondent here.

POINT I

Petitioners Misstate the Record

Because petitioners fail to acknowledge in their petition that (i) the jury returned a verdict in favor of Squillini on all issues; and (ii) that the jury resolved the municipal "policy of inaction" issue in favor of the defendants; and that (iii) plaintiff-petitioner did not appeal either point (jury's verdict 1,2,3 and 4(a))(13a) to the Second Circuit, much of their petition alleges as "facts" plaintiffs' version of trial issues resolved against them by the jury. We respond seriatim.

Petitioner Roger Vippolis was <u>not</u> "beaten viciously," petition at 3: The verdict established that Squillini did not use excessive force (answer 1 at 13a).

The record contains no evidence that any officer other than Squillini (a part-timer) was hired without the requisite education certificate required by state law (petition at 5), a point noted by the court below (4a, 8a).[5]

Contrary to the petition at 5, petitioner proved nothing about other alleged incidents of "unnecessary violence," and that "no efforts were undertaken to supervise or train police officers." This issue was resolved in respondents' favor (4a), a point about which the petition at 6 hardly is candid. Similar is the attempt to

5. This is consistent with Oklahoma City v. Tuttle, __U.S.__, 53 U.S.L.W. 4639 (3 June 1985), which disapproved a "single incident" instruction as a predicate for municipal liability; the Second Circuit did not decide whether "a decision to give one officer inadequate training could be said to amount to a municipal policy," (8a) (emphasis supplied), because "Vippolis failed to prove that Squillini's training was inadequate" (9a).

circumvent the jury verdict at pp.10-11 of the petition by pretending petitioners "proved a failure of police supervision" and "failure to review instances of excessive violence."

Petitioners also manufacture allegations with no basis in the record. The petition at 15 states that "the record shows that as a result of the complaints, no effort was ever made to provide general guidelines about the use of force." The record "shows" no such theory because no proof was ever attempted on these lines, and no questions were ever asked about the training of any police officer besides Squillini.

POINT II

The Questions Alleged in the Petition are not Presented by the Record

The questions alleged in the petition

either (i) were never presented at trial, or (ii) were resolved against plaintiffs by the jury verdict. Further, as the Second Circuit noted (4a-5a), it was plaintiffs-petitioners themselves who (wrongfully) succeeded in keeping out of the record evidence on training which they now wish reviewed (4a-5a n.2).

The record contains no evidence one way or the other about a "Police Department's failure to establish a police training program" (petition at i); no such theory was ever asserted below. Plaintiff's trial theories were confined to the two lines of proof detailed in the Second Circuit's opinion at 3a-4a.

Ccntrary to question 1, it is <u>not</u> true "that a state statute mandated such a program." The statute (quoted at 4a n.1) required that each officer hired bear a certificate from a formal municipal

training program, but did not require municipalities themselves to undertake the formal certificate training, which is available elsewhere.

It is not in the record whether "the municipality failed to provide training for police officers." Proof was attempted only as to Squillini, and there are no questions in the record about the training of any other policeman.

It is not true that the respondents "failed to supervise [policemen] even after complaints were made about incidents involving unnecessary violence."[5] Question Presented 1. This issue was litigated extensively and resolved by unappealed jury verdict for respondents (4(a)).

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5. Brandon v. Holt, 471 U.S. ___ (1985) held that a judgment against a municipal officer in his official capacity imposes liability upon the city which employs him. No officer having been found liable in any capacity, Brandon is inapplicable here.

POINT III

Petitioners' Complaints that the Court Below Incorrectly Read the Record Are not Worthy of Certiorari

At bottom, the petition really challenges not the legal correctness of the Second Circuit's view of the law, but rather that court's reading and comprehension of a particular trial record, which the petitioners characterize as "myopic" (petition at 8). The petition really raises only the question of whether the court below correctly reviewed the evidence of a 900-page trial record with 150 pages of exhibits, e.g., petition at 8: "the Second Circuit simply failed to make any evaluations of proof. . ."; "the Second Circuit panel failed to deal with several significant fact patterns in the record"; ibid at 16: "its inappropriate constriction of petitioners' theory of

liability"; ibid at 17: "[b]y failing to acknowledge this more complex pattern and policy of deliberate indifference, the court below failed to consider the fact that the pattern set forth in the record fully justifies a recovery".

It is simply not within the purview of certiorari to review whether the Second Circuit has correctly read a particular trial record. Rule 17.1. Further, petitioners' failure to disclose candidly that the jury decided one of the two litigated issues of municipal liability in favor of respondent Village should alone be grounds to deny the petition. Rule 21.5.

Conclusion

The petition for a writ of certiorari should be denied.

New York, New York
24 February 1986

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APPENDIX

VERDICT SHEET

1. Do you find that plaintiff has sustained his claim that Officer Squillini beat him with excessive force?

____ Yes or ____ No.

2. Do you find that plaintiff has sustained his claim that Officer Squillini arrested him without a good faith belief in the legality of the arrest?

____ Yes or ____ No.

3. Do you find that plaintiff has sustained his claim that Officer Squillini initiated the criminal prosecution from malice and falsely testified in support of those charges?

____ Yes or ____ No.

4. Do you find that plaintiff has sustained his claim that the Village of Haverstraw and the Village Police Department are liable under the theory that they:

(a) Maintained a policy or custom of incaction against officers charged with violating the civil rights of citizens which resulted in the infliction of plaintiff's injuries?

____ Yes or ____ No.

and/or

(b) Hired police officers in violation of State law and provided inadequate training and supervision for Officer Squillini thereby indicating deliberate indifference or gross negligence on the part of the Municipal officials in charge.

____ Yes or ____ No.

If your answer is "No" to all of the above questions you do not answer the following. Only if your answer is Yes to one or more of the above do you answer the following.

5. What is the amount of the compensatory damages for Roger Vippolis: $35,000.

6. What is the amount for compensatory damages for plaintiff Deborah Vippolis: $15,000.

7. (a) Do you find that plaintiff is entitled to punitive damages against Officer Squillini

____ Yes or ____ No.

(b) If your answer to 7(a) is Yes, in what amount.

$_____.

(No. 7 crossed out by jury)